

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

AUG 20 2013

S-136262
No. _____
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HASTINGS COMMUNITY CENTRE ASSOCIATION, KENSINGTON COMMUNITY CENTRE ASSOCIATION, THE KERRISDALE COMMUNITY CENTRE SOCIETY, KILLARNEY COMMUNITY CENTRE SOCIETY, RILEY PARK HILLCREST COMMUNITY CENTRE ASSOCIATION, and SUNSET COMMUNITY CENTRE ASSOCIATION

PLAINTIFFS

AND:

THE VANCOUVER BOARD OF PARKS AND RECREATION

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below. 20AUG13 1322086 R198 S-136262

200.00

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

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Part 1: STATEMENT OF FACTS

A. INTRODUCTION

I. BACKGROUND AND HISTORY

1. The Plaintiffs in this matter are six community centre associations:
 - a. Hastings Community Association (“Hastings”);
 - b. Riley Park Hillcrest Community Association (“Hillcrest”);
 - c. Kensington Community Centre Association (“Kensington”);
 - d. The Kerrisdale Community Centre Society (“Kerrisdale”);
 - e. Killarney Community Centre Society (“Killarney”); and
 - f. Sunset Community Centre Association (“Sunset”).(together the “Six Associations”)

2. Each of the Six Associations is a society governed by the *Society Act*, RSBC 1996, c 433 (the “*Act*” or the “*Society Act*”), as amended.

3. Each of the Six Associations has a mission statement, which is to provide recreational, athletic, and social programs and services to their communities. They fulfil this goal and have done so for decades by operating – jointly with the Defendant, the Vancouver Board of Parks and Recreation (the “Park Board”), which operates under the City of Vancouver (the “City” or “Vancouver”) pursuant to the *Vancouver Charter*, SBC 1953, c 55, as amended – community centres and related facilities. Each of the Associations has invested millions of dollars and volunteer hours into their respective community centres and communities.

4. While the current framework of joint operation between the Plaintiff and the Park Board dates back to the 1970s, each of the Six Associations in these proceedings predates this arrangement.

5. The Six Associations were founded between the years of 1934 and 1987, each for the purpose of providing their unique communities with community centres, community based programs, and services. Initially the Park Board and City were desirous to build facilities to promote a healthy and community-based lifestyle; their budgets did not permit the building of the required facilities. Volunteer community leaders took it upon themselves to obtain financing, locally, provincially, and federally to assist the Park Board in building and running the community facilities. Millions of dollars and volunteer hours over the last century have been given by the Six Associations to build and operate their community centres throughout Vancouver to create facilities that promote a positive communal healthy environment for Vancouverites of all ages.

6. As the City did not have the budgets, each of the Six Associations raised money through fundraising initiatives in which the donations and monies raised came from individual members and small businesses in their communities. The funds were used by each of the Six Associations to help build

community centres, swimming pools, skating rinks, and sports fields for their communities' benefit. The Six Associations have obtained millions in grants that went directly into their respective community centres. The City is not eligible for these grants and as such needed the assistance of the six Associations to have the community centres the communities now enjoy.

7. As the buildings for the community centres and related facilities were built on land owned by the City, each of the Six Associations and the Park Board/City entered into a mutually beneficial relationship with the goal of running successful and self-sufficient facilities that could generate profit that would be reinvested directly into their respective communities at the direction of each of the Six Associations. Historically, and at all material times, the money gained from the operation of the community centres stayed in each community and did not form part of the general revenue of the City.

8. The essential, material terms of the relationships between each of the Six Associations and the Park Board were, and remain, consultation, mutual agreement, and delineated areas of responsibility between the parties. The intent of these relationships was, and remains, that neither the Six Associations nor the Park Board would operate independently of the other.

9. From their inception, the community centres were, and remain, very much grass roots, community-based initiatives. The Six Associations have been, and continue to be, volunteer-run and member-driven organizations with representatives elected by the community members.

10. For the most part in the 1970s, each of the Six Associations and the Park Board entered into a separate Joint Operating Agreement ("JOA") to codify the cooperation and clarify the general allocation of rights and responsibilities between the two parties. Although there are some slight differences between the JOAs, they are for the most part identical contracts.

11. These parties operated within the JOAs for decades, and the process has worked well. To varying degrees each of the Six Associations continued to raise significant funds and marshalled their volunteers to finance the building and renovation of community centres and related facilities. These facilities have for decades housed programs and services for the communities from preschools to seniors-specific programming. Each of the Six Associations has, working together with the Park Board, built or renovated multiple community facilities and provided services to tens of thousands of patrons.

12. At historical and all material times, the Six Associations provided, and continue to provide, recreational, social, athletic activities that are open to the public and tailored to the communities they serve. At historical and all material times, the Six Associations also provided, and continue to provide, services that are needed by their communities, such as childcare, subsidized lunches for low-income seniors, and programs tailored to at-risk youth.

13. There are no other volunteer-based community organizations like the Six Associations elsewhere in Canada. The relationship between the Six Associations and the Park Board set out above is a special and unique model that has achieved great success for many decades.

14. However, the current Park Board administration has indicated that it wishes to severely limit the role of the Six Associations to that of fundraisers or volunteer coordinators with no actual voice in the operation of their community centres. In support of this end, the Park Board has engaged, and intends to continue to engage, in a pattern of conduct directly contrary to long-standing, historical practice and the implicit or express terms of the relationship between these parties with the intent of depriving the Six Associations of the assets, revenue, and powers that are their right and that are necessary for the fulfillment of their role in the operation of their community centres. Effectively, the Park Board seeks to unilaterally remove organisations that have been historically, and at all material times by fact and law remain, equal partners in the activity of creating, running, and maintaining their respective community centres.

15. The conduct of the Park Board has caused, will cause, and is causing the Six Associations loss and harm that threatens the future success and existence of the community centres and the Six Associations themselves.

II. THE PARK BOARD'S DUTY TO THE SIX ASSOCIATIONS

16. The relationship between the Park Board and the Six Associations has a long and storied history with many of the explicit and implicit terms and obligations therein being determined from the regular practice and reasonable expectations between these parties. The JOA was created out of a desire to confirm and clarify the basic terms of the relationship between the parties. It was never meant to be an inclusive or exclusive agreement limiting the duties and responsibilities between the parties. It was always the intent of the parties, historically and at all material times, to act in unison and in good faith to achieve better community centres and better communities in Vancouver. The Six Associations gave and the Park Board took with this arrangement clearly in mind.

17. Each of the Six Associations' JOA with the Park Board contains, but is not limited to, clauses that state the following:

- a. a geographical outline of the "communities" determining which facilities were to fall under the purview of the JOA;
- b. the level of sharing the operations and profits of specific facilities;
- c. the Park Board duties, subject to budgetary constraints;
- d. the Six Associations should have reasonable input on running the facilities and the related staffing;
- e. the Park Board shall not enter into any agreement for the use of the facilities nor make any alterations or additions to the facilities without consultation;
- f. all membership fees and all revenues generated by the facilities shall be received by the whichever of the Six Associations is party to that particular JOA;
- g. equipment purchased by the Six Associations remains their property; and
- h. whichever of the Six Associations is party to that particular JOA should encourage membership and participation of community groups in the association and its board of directors.

i. Over the more than 30 years since the JOAs were entered into some of the arrangements between the Park Board and each of the Six Associations have been amended by oral or written agreements between the parties. At all times, however, it has remained an express or implicit term of the relationship between these parties that the Park Board would carry out its duties honestly, in good faith, and with due diligence in consultation and mutual agreement with each of the Six Associations.

18. One such example of the agreements between the parties having changed since the JOAs were executed is the agreement between the Park Board and each of the Six Associations with regard to memberships. Being societies, pursuant to the Act each of the Six Associations is required to maintain an accurate list of its members. It has always been the case that all people that have taken programs at the various community centres have been members of that community centre. Each of the Six Associations has a mechanism for charging an annual membership fee. This is important not only to comply with the Act and calling special and annual general meetings at which members may vote, but also for the purpose of contacting and communicating with volunteers.

19. Since the Park Board demanded that it create a central, online registration system for the programs and classes held at the community centres of the Six Associations in or about 2007, the Park Board assumed responsibility for maintaining updated lists of active members of the Six Associations, with the exception of Kerrisdale, which maintains its own list. It was always made clear to the Park Board that membership is a key to the Six Associations and the Park Board had agreed to maintain the membership lists for the Six Association and forward the list and membership fees to the Six Associations. For an unknown reason the Park Board has refused to consistently ensure that all users of the facilities are members even though this has been an integral part of the survival of the Six Associations.

20. Furthermore, the Six Associations have a special relationship with the Park Board and depend on the Park Board acting to protect their interests in a manner consistent with the JOAs and the historical relationship between these parties in order to fulfill their mandates and mission statements. Because of the nature of the relationship between these parties, the Park Board is in the role of a fiduciary with a duty to act towards the Six Associations with loyalty, trust, and confidence.

Duty of Consultation

21. The relationship between these parties has always included an obligation of mutual consultation and agreement that reflects a jointly-held intention that none of them would act unilaterally and that the relationship would always be one of mutuality.

22. The express or implicit terms of each JOA include a requirement that the Park Board consult and seek agreement with each of the Six Associations on matters relating to the operation and financing of the respective community centres. This requirement for consultation arises from the historical conduct between these parties which confirmed a jointly-held intention that none of them would act unilaterally and that the relationship would always be one of mutuality

23. Without detracting from the generality of the foregoing, the Park Board's duty to consult with each of the Six Associations under the JOA arises on matters including but not limited to: operating of the facilities, dealing with facility staff, preparation of the programs and activities at the various community centres, entering into agreements related to the facilities, and the making of any alterations or additions to the community centres or related facilities.

24. Additionally, each JOA is subject to the overarching principle that the community centres and related facilities shall be operated in concert by the Park Board and each of the Six Associations. This is the key to the JOA, which is the agreement that describes and formalized the parties' relationship.

25. Furthermore, as a result of the nature of the relationship between the parties and the vulnerability of each of the Six Associations to any breach or bad faith on the part of the Park Board, which placed the Park Board in a fiduciary position to that of each of the Six Associations, the Park Board had an additional duty to consult with the Six Associations before it took any steps which could be construed as not being in the best interests of the Six Associations.

III. THE SIX ASSOCIATIONS

26. Each of the Six Associations is a society in good standing under the Society Act and is governed by a board of directors, all of whom are volunteers and who are directed by their society's bylaws and constitution. The bylaws of each of the Six Associations set out, *inter alia*, classes of and requirements for membership, powers and duties of directors and proceedings of the board of directors.

27. Although each of the Six Associations has its own unique story, the theme of grass roots, community initiative is common to all of them. In each case the Six Associations were formed – as many as 80 years ago – by citizens and small business owners in their respective communities who came together out of a desire to build centres for community recreation, leisure, athletics, social activities and community support. Engaging their neighbours, these groups of volunteers raised awareness and funds to build the community centres, swimming pools, ice rinks, playgrounds and sports fields that their communities needed.

28. Today, this spirit and mission continues, with each of the Six Associations continuing to rely on their members and volunteers for fundraising, administration, leadership, and support in the maintenance and development of their community centres and related facilities. Without being able to contact or work with their membership the Six Associations could not perform their mandates under the relationship with the Park Board. In addition, they would not exist and could not perform their duties as per their bylaws, constitutions and the *Society Act*.

Sunset Community Centre Association

Sunset History

29. Sunset began in the 1940s (and was formally incorporated as a society in 1987) by a group of residents in the growing Sunset neighbourhood who saw a need to be filled: that of the post-World War II baby boom leading to young families and children with recreational needs. To address the problem, Sunset formed and decided to build something that did not exist in Vancouver at that time: a modern community centre, complete with gymnasium, stage, kitchen and lounge.

30. The City donated the southeast corner of East 51st Avenue and Prince Edward Street to the project, and because the City did not have the budget for the facility the neighbourhood raised money for construction. Volunteers went door to door for donations, held raffles, and staged carnivals to bring in funds. Sunset even purchased 11 buildings from an army camp in Stanley Park and used the proceeds from the sale of the lumber to add to the community centre construction project.

31. By 1947, Sunset had raised \$22,000.00 which was \$125,000.00 short of what was needed. To raise additional funds, Sunset founder Stan Thomas went to Hollywood to ask Bing Crosby to perform a benefit concert in support of the community centre project. Mr. Crosby agreed to help the Sunset cause and in 1948 performed a sold-out concert at the PNE Forum that raised \$26,000.00 and provided the momentum needed to see the project through to completion, even appearing at ground breaking ceremonies for the new community centre.

32. When the Sunset community centre opened in 1950, it was dedicated to those that fought and died for Canada in World War II and was named the Sunset Memorial Centre. The gymnasium was called the Bing Crosby Auditorium. In 1952 an outdoor swimming pool was added. For approximately 57 years the facility was a popular gathering place for area residents.

33. In 2008, a new community centre (the “Sunset Community Centre”) opened on at Main Street and East 52nd Avenue. The need for a replacement for the old Sunset Memorial Centre had been known for many years and in the late 1990s, Sunset again began fundraising for the construction of the new Sunset Community Centre. This time, Sunset, through its volunteer efforts raised 1 million dollars.

34. From the time that the Sunset facilities were constructed, the Park Board and Sunset worked together to operate them under an oral agreement, which lasted until the Sunset JOA was executed.

Sunset Joint Operating Agreement

35. In November 1987 Sunset and the Park Board entered into a JOA for the joint operation of the Sunset Community Centre and related facilities.

36. The JOA provided that it applied the area described as “41st Avenue and 49th Avenue on the North”, “Marine Drive on the South”, “Knight and Fraser Streets on the East”, and “Main Street on the West”.

Present Day Sunset Facilities and Services

37. In present times the Sunset Community Centre and related facilities have continued to flourish. The Sunset Community Centre offers a wide variety classes and programs of a fitness, recreation, educational, health, and family nature and houses a fitness centre, gymnasium, and an ice rink. Through these facilities, Sunset, its members and volunteers work to create a healthy and vibrant community by developing core programs that address community needs and alternative programs for the under-served populations within the Sunset community. Overall this results in the Sunset Community Centre and its related facilities being centres for community engagement and recreation between children, youth, adults, senior citizens, and families of a variety of cultural backgrounds.

38. All registrants in Sunset's programs and classes are required to be a member of Sunset. Membership fees are set by the Sunset Board. Membership is automatic upon registration in a program or class with Sunset.

39. As the Park Board sells the memberships for Sunset online as part of the program registration fees, the Park Board maintains the list of active members on Sunset's behalf with the agreement that it will be kept updated and accurate and will be provided to Sunset upon their request. The ongoing ability to access an accurate list of its members is essential for Sunset, not only to fulfill the requirements of the *Act*, its bylaws, and the bylaws of the Park Board but also so that it may communicate with and contact its members for the purposes of marshalling volunteers for Sunset and Sunset Community Centre activities, for fundraising, and for ensuring that its members can be notified of Sunset meetings where the voices and votes of Sunset's members are key to carrying on Sunset's mission.

40. Sunset also offers a number of services designed to benefit low income members of the community such as their leisure access services which provide discounts to low income individuals and families. Additionally, Sunset provides special needs recreational services for people with disabilities and operates a licensed preschool and child care facility.

Sunset Revenue, Funding, and Expenses

41. Sunset's revenue comes primarily from membership fees and income received from public registration in programs and classes.

42. This was not an issue but has become a concern now that the Park Board is threatening to cut Sunset out of the process with the OneCard as people will no longer become members of the Sunset Association.

43. Sunset also obtains revenue from federal, provincial and municipal grants that is used on the community centre and the programs. These grant applications are completed and submitted each by year by Sunset, and the funds are paid to Sunset directly. Sunset also receives revenue from other sources including the fitness centre and rentals of rooms or areas at the Sunset Community Centre or other facilities.

44. Sunset provides financing various key items, including staff wages, capital improvements, and purchasing equipment for use in the Centre.

45. Sunset has an obligation to ensure that the JOA and the overall relationship between the Park Board and Sunset remains beneficial to their joint venture and to their community. Sunset wants to preserve the system that has been so successful and which provides Sunset with the members, volunteers, and revenue it needs to continue to carry on bringing the community its much-needed community centre facilities and services.

The Kerrisdale Community Centre Society

Kerrisdale History

46. Kerrisdale was founded by a group of Kerrisdale business owners and residents under the Society Act in 1943 and was formed with the goal of building a community centre, a skating/hockey rink, and swimming pool. Kerrisdale's constitution set out the objectives of Kerrisdale, which include but are not limited to creating "good, healthy and useful citizens" in the Kerrisdale community and in Vancouver generally.

47. At the time in the 1940s, the City and Park Board officials said they could not and they did not contribute to the fundraising efforts to build these facilities, so Kerrisdale's directors, members, and supporters raised the required start-up funds on their own initiative. A door-to-door, neighbourhood campaign manned by hundreds of volunteers, including children from thirteen schools, raised over \$82,000 in private donations.

48. The fundraising efforts were successful and in 1949 the Kerrisdale arena (the "Kerrisdale Arena") opened. The Kerrisdale community centre (the "Kerrisdale Community Centre") opened in 1955. The Kerrisdale pool (the "Kerrisdale Pool") opened a few years later. Funding for an addition to the Kerrisdale Community Centre was approved in a further local plebiscite in 1968, again with the support of Kerrisdale volunteers and fundraisers in the community, with Kerrisdale contributing a significant amount of the funds required.

49. The Kerrisdale seniors' centre (the "Kerrisdale Seniors' Centre") opened in 1986; its construction was funded by Kerrisdale, matching grants from the federal and provincial governments, and the City, as well as by volunteer donations. Kerrisdale embarked on a major fundraising drive to build the Kerrisdale Seniors' Centre and over the years, providing for the needs of senior citizens has come to be a significant part of the services Kerrisdale provides.

50. These buildings have been renovated and upgraded over the years, each time with significant financial contributions from Kerrisdale, such as when the Kerrisdale Pool's roof was replaced, when seating needed to be added at the Kerrisdale Arena, renovation of the former health unit space, the fitness room expansion, replacement of the floor, and lobby renovations in the Kerrisdale Community Centre, and upgrades to ventilation and air-conditioning. Each time this has occurred Kerrisdale had paid for all

or a significant portion of the costs, relying in part on grants and private donations from members and members of the community, with matching funds from the federal and provincial governments.

Kerrisdale Joint Operating Agreement

51. In 1979 Kerrisdale and the Park Board entered into a JOA for the joint operation of the Kerrisdale Community Centre, Kerrisdale Arena, Kerrisdale Pool, and Kerrisdale Seniors' Centre.

52. The JOA provided that it applied to the area in Vancouver described as: "bounded on the West by Quesnel Drive to MacKenzie Street, West on 41st Avenue to Blenheim Street, Blenheim South to Fraser River, on the South by the Fraser River, on the East by Angus Drive to 41st Avenue, 41st Avenue East to Oak Street, Oak Street North to 25th Avenue, on the North by 25th Avenue West to East Boulevard, 23rd Avenue to Vine Street to Oliver Crescent to Trafalgar Street to Alamein Avenue to Quesnel Drive.

Present Day Kerrisdale Facilities and Services

53. In present times the Kerrisdale Community Centre and related facilities have continued to flourish as a result of the original and ongoing efforts of Kerrisdale, its members and volunteers. The Community Centre offers a wide variety recreation, educational, health, and fitness programs and houses an exercise room, gymnasium, the Kerrisdale Pool, public library, and seniors' wing.

54. The Kerrisdale Arena (now officially titled the Kerrisdale's Cyclone Taylor Skating Arena) is located approximately two blocks away from the Kerrisdale Community Centre and is still in use and now also includes a summer indoor play area known as the "Kerrisdale Play Palace"). The original facilities and buildings are still in use, but Kerrisdale has added additional amenities and structures. The Kerrisdale Play Palace is an example of Kerrisdale and its volunteers developing unique ideas to create a successful community centre and meet the needs of their community. Outdoors in Kerrisdale Centennial Park, Kerrisdale provides a playground and rose garden to appeal to children and families, and recently installed an outdoor games board in memory of a deceased member.

55. The programs and classes offered by Kerrisdale are developed by Kerrisdale and the Park Board and are made available to the public for registration through an online registration system operated by the City and located on the City's website.

56. All registrants in Kerrisdale's programs and classes are required to be a member of Kerrisdale, as are users of the Kerrisdale fitness centre; admission to Kerrisdale's pool and arena do not require a membership, with the exception of skating lessons, which do. Membership fees are set annually by the Kerrisdale board of directors. Memberships are sold through the Kerrisdale Community Centre and membership and membership information is required to access the City's online registration site.

57. Kerrisdale also offers a number of services designed to benefit the specific needs of the Kerrisdale community, including but not being limited to: the Kerrisdale Seniors' Centre, a subsidized seniors' lunch program, the Kerrisdale Play Palace, a children's wading pool, sponsored music in the park evenings during the summer months, half-price Christmas day ice skating, and volunteer consultations and blood pressure monitoring with a doctor at the Kerrisdale Seniors' Centre.

58. Additionally, Kerrisdale funds and provides to Kerrisdale members various free programs such as card, board games, a play area for children, shower facilities, table tennis for families and youth, pool, and a weekend cinema in the Kerrisdale Seniors' Centre.

59. Although the Kerrisdale community has large population of seniors, it balances this with many young families and Kerrisdale, though the activities at the Kerrisdale Community Centre, develops programs and services and activities to meet the need of both groups. Recently, Kerrisdale re-instituted a youth committee and has sought involvement from local schools to integrate Kerrisdale youth into the Kerrisdale Community Centre.

Kerrisdale Revenue, Funding, and Expenses

60. Kerrisdale's revenue comes primarily from membership fees and income received from public registration in programs and classes. These funds are currently paid by the consumer to the Park Board through the City's website and the Park Board remits the total amount of these program fees membership fees to Kerrisdale, less 3%, on a seasonal basis, or the funds are paid directly to Kerrisdale if booked in person at the Kerrisdale Community Centre.

61. Kerrisdale also obtains revenue from grants which it receives on a mainly annual basis. These grant applications are completed and submitted each year or as required by Kerrisdale on its own behalf, and the funds are paid directly to Kerrisdale. Such grants include summer day camp support from the federal government and project specific grants from the City.

62. Kerrisdale also receives revenue from individual and corporate donations, rentals of rooms or areas at the Kerrisdale Community Centre or other facilities, and revenue from interest. Kerrisdale has also received in kind donations of vehicles used for seniors' activities. These sorts of donations and revenue are closely connected to the Kerrisdale community and the visible and integral role that Kerrisdale and the Kerrisdale Community Centre play in that community.

63. Kerrisdale continues its history of providing financing for the maintenance of and improvements to the Kerrisdale Community Centre and related facilities on an ongoing basis, as required. Recently, this includes but is not limited to:

- a. installation of a ventilation system in the Kerrisdale Seniors' Centre kitchen in 2012;
- b. installation of air-conditioning in the Kerrisdale Seniors' Centre in 2011 (during the 2012 summer heat wave the Park Board advertised it as a "cooling centre");
- c. installation of an electronic sign for the Community Centre located at 42nd Avenue and West Boulevard in 2010; and
- d. purchase and maintenance of fitness centre equipment.

64. Kerrisdale's purpose and vision remains what it was in the 1940s: to engage in works of a moral, benevolent, charitable, educational, philanthropic, and social nature to benefit the members of Kerrisdale or the organizations Kerrisdale represents. Specifically, this has been carried out through creating the

Kerrisdale Community Centre and related facilities and providing programs and services to the community to meet their changing needs and ensure access for all.

Hastings Community Association

Hastings History

65. Hastings was founded a group of citizens in the Hastings neighbourhood of Vancouver under the *Act* in November 1934 with the goal of establishing community services and programs for members of the Hastings community. During the great depression the community recognized a need to healthy alternatives for recreation and socialization for those who were struggling with employment and finance.

66. In 1934 a group of local individuals came together and paid 50 cents each to join the “Hastings Chamber of Commerce and Athletic and Community Association” and volunteered their time to clear land to create a tennis court after the Park Board said it was unable to pay to have the facility built, but offered to provide materials. The group received donations from local businesses and used them to build a lacrosse box. Shortly thereafter the group began to fundraise and advocate for more recreational activities such as ice hockey, bowling and held fundraising activities including bake sales and community dances. These funds were used to build facilities such as law bowling greens.

67. Overtime, this focus came to involve the goal of building a community centre to exist at the heart of a vital community. Construction began on the first Hastings community centre (the Hastings community hall) in 1936; spearheaded by Hastings, but working in partnership with the Park Board. Added to the Hastings community hall over the years were lacrosse boxes, horseshoe pits, and a pool.

68. During the Second World War, Hastings extended its outreach, rallying the community to raise money and send supplies to Canadian soldiers, while carrying on programs and services at home, renting out its facilities to groups such as the Brownies, and fundraising to open a children’s library.

69. By 1954, the Hastings facilities were at capacity and so Hastings and the Park Board worked together to build a new, larger Hastings Community Centre and each contributed equal sums on money to finance it, with the City making up the difference between those amounts and what was needed. The new Hastings Community Centre opened in 1956 on the site of the original community hall and had extra space which allowed Hastings to offer programs such as bodybuilding, golf lessons, model airplane building, and baton twirling, as well as groups such as a children’s choir, a pottery studio, and junior sports teams.

70. The efforts to enlarge the Hastings Community Centre continued over the years, with Hastings’ initiative and an administrative and financial partnership between the Park Board and Hastings. Added was a seniors’ wing, new kitchen facilities, and a swimming pool. In 1984 Hastings sought and received grants in the approximate amount of \$240,000.00 to upgrade the Hastings Community Centre and the pool. At every stage in its development, Hastings added to the programs and services offered to include more sports and lessons, and community events such as boxing tournaments, a beauty pageant, hobby and fashion shows, Scottish dance competitions and public debates.

71. Recently Hastings has contributed approximately \$10,000.00 to a landscape redevelopment project at the entrance to Templeton Pool and Hastings is constantly reinvesting in its community by upgrading equipment used at the Hastings Community Centre, such as the seniors' centre audio system, computers, and youth games room equipment.

72. As Hastings' existence predates the community centre movement in Vancouver and Hastings focus has always had a strong emphasis on outreach services and programs that extend beyond the walls of a community centre to include those who most need the services and assistance. Accordingly, Hastings has always has especially strong ties to community groups such as Kiwassa Neighborhood House, local churches, the community policing centre, and schools' parents advisory councils, amongst others.

73. Hastings' objectives are set out in its Constitution and include but are not limited to promoting and assisting "all kinds of endeavor of a charitable, social, cultural, sporting, recreational and of a community character, and for the purpose of so doing to buy or otherwise acquire such equipment and things as may be needed therefore" and to "operate a community centre to be used for programs, workshops, athletics, art, music, handicrafts, hobbies, and recreation for the benefit of the general public." Hastings therefore exists to fulfill these objectives and to undertake all required activities in support of them, from developing programs, to fundraising, to establishing connections and partnerships with likeminded organizations.

Hastings Joint Operating Agreement

74. In 1979 Hastings and the Park Board entered into a JOA for the joint operation of the Hastings Community Centre, Hastings Pool and related facilities.

75. The JOA provided that it applied to the area in Vancouver described as: "bounded by Burrard Inlet on the North, Boundary Road on the East, 1st Avenue on the South and Nanaimo Street on the West from 1st Avenue to Adanac Street to Victoria Drive on the West to Burrard Inlet."

Present Day Hastings Facilities and Services

76. The Hastings Community Centre and related facilities are still popular and active centres of their community. The Hastings Community Centre offers a wide range of facilities including a racquetball and tennis courts, a games room, computer lab, waterpark, playground, and entertainment centre, as well as a fitness centre. The programs and classes offered at the Hastings Community Centre include things such as childcare, preschool, fitness classes, and recreational and educational programs.

77. The programs and classes offered by Hastings are developed by the Park Board and Hastings working together and are made available to the public for registration through an online registration system operated by the City and located on the City's website.

78. All registrants in Hastings' programs and classes (not including special events) are required to be a member of Hastings and a membership is also required for using the fitness centre. Membership fees are set by the Hastings Board. Memberships are sold through Hastings Community Centre and through

the Park Board's online, central registration system. The Park Board, however, failed to or refused to include Hastings' membership prerequisite in its registration software and caused Hastings to lose significant amounts of members and membership. The Park Board remits back to Hastings on a monthly basis the revenues it has collected from programs and membership fees. Currently, based on the list of active members maintained by the Park Board, Hastings has approximately 3,000 registered, annual members however this is clearly a much lower number than the current number of members.

79. As it has historically, Hastings continues to offer services designed to benefit the specific needs of the Hastings community, including but not being limited to: a seniors' lunch program ("Meals to Wheels"), summer day camps for children, and a lapidary club with a designated space and equipment. As well, Hastings funds and operates a family enrichment centre, which welcomes caregivers with children under 5 years old for socialization, child development, and parenting education. Hastings also provides youth programming support for pre-teen and teenage individuals which involves social, athletic, and recreational activities, cooking classes, a leadership program and youth council. Currently, monies are spent on these programs because the Hastings community and membership has made it clear that these are programs that are wanted and needed in their community centre and community.

80. The Hastings Community Centre and related facilities are staffed by union employees employed by the Park Board but funded by Hastings, staff and contractors which are both employed by and paid by Hastings, and volunteers, many of whom are also members of Hastings. Pursuant to the agreement between the Park Board and Hastings and the JOA, these employees are to follow the reasonable directives of Hastings, but the Park Board has directed many staff members to disregard the direction of Hastings and to follow the Park Board's directives exclusively, making it difficult for the program and services at the Hastings Community Centre and related facilities to be carried out efficiently and in the best interests of the community.

Hastings Revenue, Funding, and Expenses

81. Hastings' revenue comes primarily from membership and program fees received from public registration in programs and classes. These funds are currently paid by the consumer to the Park Board through the City's online registration system and the Park Board presumably remits the total amount of these program fees membership fees to Hastings, on a semi-regular basis, less credit card handling fees, or the funds are paid directly to Hastings if booked in person at the Hastings Community Centre.

82. One of Hastings other main sources of revenue is from parking (at the Pacific National Exhibition (the "PNE") and elsewhere.

83. Hastings also receives revenue from its fitness centre, of which approximately 70% is used to pay fitness centre staff and the other approximate 30% is reinvested in the fitness centre to upgrade equipment, which is purchased and maintained entirely by Hastings.

84. Hastings also receives income from grants which it receives on an annual basis or as one-time grants (with the exception of the preschool grants, which are received monthly). These grant applications are completed and submitted each year or as required by Hastings, and the funds are paid directly to

Hastings. Such grants include those received from Human Resources, Skills and Development Canada for Hastings' youth camp, a grant from the Minister of Children and Families, grants from Vancouver Coastal Health to support Hastings educational seasonal programming initiatives and seniors' lunch program, amongst others received from municipal, provincial and federal government departments. These grants are designed to support Hastings' initiatives of community outreach, access, and diversity.

85. Hastings also receives revenue on a more limited basis from rentals of the Hastings Community Centre facilities. As well, Hastings receives in-kind donations from members and community residents.

86. In addition to the forgoing contributions, Hastings also provides financing for the maintenance of and improvements to the Hastings Community Centre and related facilities, such as the fitness centre, on an ongoing basis, as required. Hastings has purchased or financed nearly all of the furnishings and equipment used in the Hastings Community Centre, including 100% of fitness centre and cardio room equipment. Also, due to changes in licensing requirements Hastings routinely renovates its pre-school and family enrichment centre to bring them up to licensing standards and code. Hastings also fully pays for the printing and distribution of the Hastings/Templeton seasonal brochure, and pays for the maintenance of sports equipment and onsite pianos.

87. Hastings' purpose and vision remains what it has been since it was founded in 1934: engage in and promote activities of a charitable, social, cultural, sporting, recreational nature, through programs and services provided through the operation of the Hastings Community Centre to the community, for the benefit of the Hastings community.

Kensington Community Centre Association

Kensington History

88. Kensington was founded by business owners and residents of the Kensington community under the Act in 1955 and was formed with the goal of building a community centre related facilities to improve the quality of life for the residents of the Kensington neighbourhood. This was intended to be achieved through the building of a community centre and creation of programs and services for citizens of all ages.

89. Originally, Kensington acted under the umbrella of another community centre association and did not have a budget from the Park Board. Through local initiative grants, grants from the federal government, and rental income from an old hall, Kensington ran programs for the community, running such programs out of a variety of locations, including schools and churches who volunteered their space.

90. In the 1970s Kensington became recognized as a community centre association by the Park Board and began to partner with the Park Board for providing the community centre and services, which previously Kensington had been provided of its own initiative and from its own funds.

91. In the late 1970s, Kensington and its members worked to raise funds for a new community centre and obtained funds from a neighborhood improvement grant program, the federal government, and

individual donors. A fitness room and viewing centre, Park Board office, pottery studio, multipurpose room, and washrooms were added as a result.

92. The Kensington community center (the “Kensington Community Centre”) opened in 1980 with building one and included a fitness centre (with an exercise pool), lounge area, pottery studio, amongst other facilities geared towards the interests and needs of the Kensington community. Building two of the Kensington Community Centre opened in 1982 and included a gym, racquetball courts, and a lounge.

93. During the 1980s, a new, locally funded playground was added as a result of the initiative of Kensington’s members and volunteers. Additionally, significant upgrades were added to the baseball field, including a new building on the ball diamond, and equipment including a backstop, sound system, signs, and equipment – all of which were paid for out of funds raised by Kensington. Also during this time, Kensington raised money to replace the doors on the old hall.

94. Between approximately 1987 and 1992 Kensington leased a gymnasium from the Vancouver school board in which to run programs and other events; this both raised additional revenue for Kensington and expanded the Kensington Community Centre’s reach into the community and engaged the public.

95. In 1996 funds from the City, the Park Board, the federal and provincial governments, and funds contributed by Kensington were combined to upgrade and expand the Kensington Community Centre. The new building was opened in 2001 and included a dance studio, seniors’ lounge, and office space. Kensington contributed a significant amount to the upgrades.

96. The Kensington Community Centre and the equipment used therein, has been maintained and upgraded by Kensington using its own funds. This has included purchasing or replacing equipment for the Kensington Community Centre, upgrading the computer systems, improving the entrance and grounds for the Kensington Community Centre, upgrading all racquetball courts and equipment, and landscaping. Every such project or initiative involved Kensington relying on its members and volunteers for fundraising support in the community.

Kensington Joint Operating Agreement

97. In April 1979 Kensington and the Park Board entered into a JOA for the joint operation of the Kensington Community Centre.

98. The JOA provided that it applied to the area in Vancouver “bounded by Kingsway on the North, Nanaimo Street on the East, 41st Avenue on the South and Fraser Street on the West”, with 41st Avenue being considered the southern boundary, unless applicable to recreation programming and related activities carried out by Kensington, in which case 49th Avenue is the southern boundary.

Present Day Kensington Facilities and Services

99. In present times the Kensington Community Centre has maintained their initial success and popularity. The Kensington Community Centre offers a wide variety recreation, educational, health, and

fitness programs and includes a pool, fitness centre, dance studio, pottery studio, seniors' centre, outdoor skateboard park, and playground. Much of Kensington's focus is on providing activities for children and families with Kensington offering programs such as day camp, preschool, and a children's festival.

100. Kensington offers discounts for low income families and provides some subsidized access to programs like summer day camp on a case-by-case basis, assessing the needs of the families or individuals in question. Kensington does this in annual basis in consultation with local schools but always ensures the discounts fit within their annual budget.

101. All registrants in Kensington's programs and classes are required to be a member of Kensington, with the exception of users of the fitness centre and exercise pool who are exempt from the membership requirement, but encouraged to become members. Membership fees are set by the Kensington Board. Currently, membership fees for Kensington are: \$6.00 for adults, \$3.00 for seniors, \$10.00 for families, and \$4.00 for children/youth.

102. Memberships are also available for purchase in person at the Kensington Community Centre. Currently, Kensington has about 2,000 members, but this number should be higher as the Park Board appears to have recently failed to ensure that the mandatory membership are purchases through its online program registration system.

103. Kensington also operates a licensed preschool and childcare facility out of the Kensington Community Centre and provides before and after care for school aged children.

Kensington Revenue, Funding, and Expenses

104. Kensington's revenue comes primarily from income received from public registration in Kensington's programs and classes. These funds are currently paid by the consumer to the Park Board through the City's website and the Park Board remits the total amount of these programs and membership fees, less 2%, to Kensington on a weekly basis.

105. Kensington also earns revenue through the operation of its preschool and out-of-school childcare programs, from membership fees, and gaming revenue. In the 1990s Kensington raised approximately \$150,000.00 by working at a casino jointly run by the casino company, government and a non-profit organization.

106. Kensington obtains additional revenue from grants which it receives on a mainly annual basis from the provincial and federal governments. These grant applications are completed and submitted each by year by Kensington volunteers on behalf of Kensington, and the funds are paid directly to Kensington for use in its programs and for spending on the Kensington Community Centre and equipment. Grants which Kensington applies for and receives, typically on an annual basis include the British Columbia Heritage Grant, Small Neighbor Grant, the Federal Seniors Grant, an Improvement Grant (specifically for the Preschool), and a grant from Vancouver Coastal Health designed to increase access to Kensington Community Centres and its programs for people with chronic, physical conditions.

107. Kensington also receives revenue from individual donations and rentals of rooms or areas at the Kensington Community Centre or other facilities.

108. Kensington provides financing for numerous and various upgrades to buildings and equipment as mentioned above and has paid such items without assistance from the Park Board, even where it was items or projects that specifically benefitted the Park Board, such as purchasing the Park Board a new photocopy machine, color printer, paying for an alarm system and landscaping, contributing money to assist with a Park Board budget shortfall in or about 2009-2010, purchasing equipment for the fitness centre (from which the Park Board receives all revenue), and paying for a feasibility study for replacing the old hall and cottage with a new building for preschool and program activities.

109. As well, Kensington's ongoing expenses include refunding the Park Board all or a portion of the wages of 'group one' employees for which the Park Board invoices Kensington on a regular and ongoing basis, paying the employees and contractors employed or hired by Kensington.

110. Kensington's purpose and vision remains what it was when the neighbourhood came together to form Kensington and build the Kensington Community Centre: to provide activities for adults, children, and families at a community centre and to support groups who provide similar opportunities. Kensington is committed to continuing its mandate of developing and maintaining "programs of a recreational, educational, cultural, social and economic nature that will improve the quality of life for the Kensington Community" and doing all things that support that mission.

Killarney Community Centre Society

Killarney's History

111. Killarney was founded in 1957 as a society under the Act in reaction to the needs of the community. The residents in the Killarney neighbourhood wanted a community centre, so Killarney was formed by a group of community-minded volunteers with the goal of fundraising and constructing the needed facilities. Killarney's members and directors and other volunteers knocked on doors and got the community to okay a \$5.00 per month levy on their taxes to pay for a new centre at Killarney.

112. Killarney also fund raised through raffles and took out a bank loan to bring in enough money for a down payment on a community hall located on Pender Street in Vancouver, out of which Killarney opened the Cordial Bingo Hall (the "Cordial Bingo Hall") in 1959. The Cordial Bingo Hall, which was almost entirely run by Killarney volunteers, allowed Killarney to raise additional funds for the planned Killarney community centre.

113. The Killarney community centre (the "Killarney Community Centre"), Killarney pool and ice rink were opened in April of 1963.

114. From 1963 to 1979 Killarney and the Park Board operated the Killarney Community Centre, ice rink and pool jointly under informal agreements and good-faith cooperation until 1966 when they entered into a joint operating agreement that predates the current one.

115. The Killarney Community Centre and related facilities have been successful since the start, providing important recreational, social and athletic facilities and services to the community and becoming the nucleus of the Killarney community for individuals and families.

Killarney Joint Operating Agreement

116. In 1979 Killarney and the Park Board entered into a JOA for the joint operation of the Killarney Community Centre and related facilities. This JOA replaced the 1966 joint operating agreement.

117. The JOA provided that it applied to the area in Vancouver “bounded by Kingsway on the North, Boundary Road from Kingsway to 49th Avenue on the East then West to Kerr Street and South to the Fraser River. Fraser River comprises the Southern boundary from Kerr Street to Knight Road then North to 41st Avenue, Nanaimo Street from 41st Avenue to Kingsway” (the “Killarney Area”).

118. The JOA contained the terms common to all JOAs between the Six Associations and the Park Board, but also contained specific provisions including but not limited to:

- a. resident non-paid custodian staff to be provided at the named field houses in the Killarney Area;
- b. that the Park Board staff shall deal through Killarney on all matters pertaining to the minor sporting groups; and
- c. that certain parks in the Killarney Area shall be staffed by playground leaders in the summer.

Present Day Killarney Facilities and Services

119. The Killarney Community Centre has continued its successful operation and remains a hub of the community developing, funding and implementing unique programs and initiatives for its community, with a focus on the needs of youth and children and, by extension, on young families.

120. In early 1990s when the City changed the requirements for seismic standards, the Killarney Community Centre was deemed to be unsafe under the new standards, so Killarney successfully applied to the provincial government for a grant of 1 million dollars toward the cost of replacing the Killarney Community Centre. The total cost of the new Killarney Community Centre was 5.5 million dollars, with the difference of the funds having come from the City and from Killarney.

121. In 2000 the Killarney pool (the “Killarney Pool”) was replaced Killarney contributed \$450,000.00 raised through bingo, grants, private donations, sports groups, and derived from Killarney’s general revenue.

122. In anticipation of the Olympics the Killarney ice rink was designated as a “practice facility” and needed to be replaced. Killarney contributed \$350,000.00 to that effort which was raised through bingo, grants, private donations, sports groups, and derived from Killarney’s general revenue.

123. All registrants in Killarney's programs and classes are required to be a member of Killarney, with the exception of swimming and skating classes and drop-in programs, for which membership is not required. Membership fees are set annually by the Killarney board of directors and currently range between \$2.00 and \$8.00 per year.

Killarney Revenue, Funding, and Expenses

124. Killarney's revenue comes primarily from income received from public registration in programs and classes. These funds are currently paid by the consumer to the Park Board through the City's website and the Park Board remits the total amount of these program fees and membership fees, less 2%, to Killarney on a weekly basis.

125. Killarney also obtains revenue from grants which it receives on a mainly annual basis, most significantly the B.C. Community Gaming Grant, which provides funds for a variety of programs targeted at children and families. These grant applications are completed and submitted each by year by Killarney on behalf of Killarney, and the funds are paid directly to Killarney. Killarney also receives revenue from other sources including memberships, room rental, and vending machines.

126. Killarney continued to raise funds through the operation of the Cordial Bingo Hall, which raised thousands of dollars a year for Killarney's activities until 2003 when it closed after the indoor smoking ban and the BC Gaming Policy and Enforcement Branch's new requirements decreased its viability. During the time that the Cordial Bingo Hall was in operation, part of what allowed it to remain in business and profitable was the fact that it was staffed by volunteers provided by Killarney.

127. Killarney also operates a licensed preschool and provides out-of-school-care out of the Killarney Community Centre and Champlain Community Centre.

128. In 2012 and in previous years, Killarney has raised approximately \$160,000.00 in grants and volunteer donations from community groups. These funds allow Killarney to ensure that the cost of programs and classes at the Killarney Community Centre are kept a price which is affordable to the members of the Killarney community.

129. Killarney also raises funds and provides financing for a wide variety of special events and initiatives, including but not limited to a 'Mother Goose' child literacy program, an 'Urban Wetland Project', a public access computer lab program, outdoor movies, summer carnivals, and holiday special events (such as pumpkin carving, and visits with santa and the easter bunny).

130. As well, Killarney's ongoing expenses include but are not limited to:

- a. Refunding the Park Board all of the wages of the Group 1 employees;
- b. Paying the employees of Killarney; and
- c. Maintaining the fitness centre and equipment.

131. Killarney's purpose and vision remains what it was in the 1950s: to provide a vibrant and multifaceted community centre, programs, and services for its community. Killarney is committed to

continuing its mission statement of fostering “a better quality of life through social, educational & physical activities for the whole community with accessibility and fairness to all” and undertaking any efforts that will ensure this is carried out and carried on into the future.

Riley Park Hillcrest Community Centre Association

132. Hillcrest was founded as a society in 1965 as a society under the Act in by a group of citizens of the Riley Park community who wanted to create a centre for recreational and leisure activities.

133. Construction began on the original Riley Park recreation centre in or about 1965, with the money being raised largely by a local plebiscite carried out in 1965. The Riley Park recreation centre officially opened to the public in April 1973.

134. For several years the Riley Park recreation centre was operated through an informal agreement of cooperation and good faith between the Park Board and Hillcrest, but in 1979 that joint venture was formalized when Hillcrest and the Park Board entered into a Joint Operating Agreement.

135. The JOA provided that it applied to the area in Vancouver bordered by “Cambie and Oak on the west, 41st avenue on the south, Fraser Street on the east, and 37th and 16th Avenues on the north”.

136. In addition to the terms shared by all JOAs between each of the Six Associations and the Park Board, the Hillcrest JOA included specific provisions including but not limited to:

- a. facilities which must have full time staff;
- b. that the Park Board shall notify Hillcrest of all playground programs held in Riley Park; and
- c. use of the tennis courts in Queen Elizabeth park at agreed-upon times.

Hillcrest Revenue, Funding, and Expenses

137. The current Hillcrest Community Centre (the “Hillcrest Community Centre”) replaced the Riley Park recreation centre and was built in 2009, prior to the 2010 Vancouver Winter Olympics, primarily with funding from the federal and provincial governments, although Hillcrest funded nearly all of the furnishings and equipment for the Centre as Hillcrest typically does with surplus revenue. The Hillcrest Community Centre houses, amongst other features, a library, hockey rink, and gymnasium and is connected to the Hillcrest aquatic centre and fitness centre.

138. All registrants in programs to be held at Hillcrest and all uses of Hillcrest’s fitness centre must be members of Hillcrest.

139. The mostly volunteer-run programs and services provided by Hillcrest are wanted and needed by the Riley Park community - programs such as: preschool, karate, yoga, Pilates, indoor basketball, summer camps for youth, seniors activities, and “parent and tot” drop-in. Hillcrest provides these programs to meet the needs of the ever growing community of Riley Park and it reinvests the revenues into new programs at the Hillcrest Community Centre and into the community generally.

140. Hillcrest receives revenue from a variety of sources, including, program registration fees, fitness centre revenue, membership fees, donations from affiliated groups, and government grants and this revenue is for various expenses, including paying staff wages, and purchasing and maintaining furnishings and equipment used in the Hillcrest Community Centre. Most of the equipment and furnishings in the Hillcrest Community Centre were purchased all or nearly all by Hillcrest.

141. Hillcrest also funds events for the Hillcrest community such as youth dragon boat club, seasonal or holiday free family events, and monthly seniors' meetings which are provided at little or no cost to its members and in the interest of meeting the needs of their neighbors.

142. Hillcrest's goal is to continue to provide the social, recreational, and athletic facilities and services for which Hillcrest and the Hillcrest Community Centre are known in their community and which Hillcrest has operated successfully for approximately 50 years.

IV. THE PARK BOARD BREACHES THE RELATIONSHIP

143. The relationship between the Park Board and each of the Six Associations with regard to, *inter alia*, operating the community centres and related facilities, holding the various programs and classes, building new facilities and sharing in the revenues produced through these efforts (all of which has been more particularly described in the foregoing sections herein) constitutes joint ventures between the Park Board and each of the Six Associations, with the JOAs acting as the written portion of the joint venture agreements.

144. Alternatively, if the relationships between the Park Board and each of the Six Associations were not joint ventures then they were partnerships the Park Board and each of the Six Associations with the JOA serving as the written portion of the partnership agreements.

145. As above, there is a longstanding relationship between the Park Board and each of the Six Associations the purpose of which was, and is, for the parties to cooperate on the establishment and operation of the community centres for the benefit of the particular community in which each community centre is located.

146. Notwithstanding the history of the relationship between the Park Board and each of the Six Associations with regard to running their various community centres, as codified in the JOAs, the Park Board has taken steps recently to breach that relationship and take control of the various community centres and their revenues, remove the requirements for memberships in each of the Six Associations, and to leave the Six Associations each with a diminished role and little or no share in the revenues from use of the facilities at the community centres and reduced share in the revenue from programs.

The Dispute Resolution Clause

147. Each of the JOAs has a dispute resolution clause included at section 23, although in the Hastings JOA this clause is listed as section 24 (the “Dispute Resolution Clause”).

148. The Dispute Resolution Clause provides that:

“any disputes arising out of [the JOA] or the interpretation thereof shall be determined by the President of the Association and the Director of Recreation, and if no resolution can be arrived at the dispute shall be referred to Superintendent of Parks and Recreation. Where required, final decision will rest with the [Park] Board.”

149. In the Sunset JOA, which was drafted later than the other of the Six Associations’ JOAs, the “Superintendent of Parks and Recreation” was replaced with the “General Manager of Parks and Recreation”.

150. The term “Board” is defined as the Board of Parks and Recreation in the JOA. The Board is the party that is ultimately to make the determination of a dispute between the parties under clause 23 of the JOA. The nature of the relationship between these parties generates an implicit obligation that any such determination must be fair, unbiased, the result of due process, and in the best interests of both parties – partisan dispute resolution being utterly contrary to the spirit and the letter of the JOAs and the historical relationship between these parties.

151. The existence of this clause does not permit or excuse the conduct of the Park Board, nor does it otherwise grant the authority for the Park Board to depart from the long-established requirement of mutuality in its relationship with each of the Six Associations.

B. BREACHES OF THE JOINT OPERATING AGREEMENT

I. Top-up Funding

152. In or about 1989, the Park Board found that employees at Kerrisdale, Kensington, Hillcrest, and Sunset were performing work that was similar to unionized City employees. To address this situation, the Park Board entered into three letters of understanding with CUPE (the “Union”) in respect of Kerrisdale, Hillcrest and Sunset (the “Letters of Understanding”) in or about May 1990. This was only done to assist the Park Board in its union negotiations.

153. In the Letters of Understanding it was agreed that, effective 1 January 1990, the Park Board would take the necessary steps to assume responsibility as the employer and pay the wages of employees in particular jobs (“Group 1”) that met Union classifications and the City.

154. Further to the Letters of Understanding, the Park Board agreed with each of Kerrisdale, Kensington, Hillcrest and Sunset that while the Park Board would employ the Group 1 employees, Kerrisdale, Kensington, Hillcrest and Sunset would pay for the amount of the Group 1 employees’ wages,

less the difference between the existing wages and the cost of providing the additional wages and benefits required to bring the compensation for these jobs up to the Union level (the "Top-Up"). The Top-Up would continue to be paid by the City. (the "Group 1 Payment Agreement")

155. The administrative method agreed upon by the City and Kerrisdale, Kensington, Hillcrest and Sunset for carrying out the Group 1 Payment Agreement was for the City to employ and issue the paychecks to these Group 1 employees and bill Kerrisdale, Kensington, Hillcrest and Sunset, respectively, the cost of the wages for these positions, less the amount of the Top-Up.

156. In 2010, at the request of the Park Board and as a gesture of goodwill to help the Park Board meet a temporary budget shortfall, Kerrisdale, Kensington, Hillcrest and Sunset each agreed to pay the Top-Up amounts on behalf of the Park Board for 2010 only. The terms of this agreement was set out in memoranda of agreement between the Park Board and each of Kerrisdale, Kensington, Hillcrest, and Sunset (each a "Memorandum of Agreement") and signed by representatives of the Park Board and each of Kerrisdale, Kensington, Hillcrest, and Sunset in or about March 2010.

157. Each Memorandum of Agreement stated, *inter alia*, the term of the Memorandum of Agreement was from 1 March 2010 to 31 December 2010.

158. In breach of the terms of the Memorandum of Agreement and the underlying Group 1 Payment Agreement the Park Board failed to reinstate its payments of the Top-Up beginning in 2011.

159. Kerrisdale, Kensington, Hillcrest, and Sunset continued to pay the Top-Ups for the Park Board out of good will and in the interests of the Group 1 employees, but the Park Board's breach of the Group 1 Payment Agreement and the Memorandum of Agreement (the "Group 1 Breach") is ongoing.

160. The Group 1 Breach is also a breach of the JOA insofar as:

- a. it is a provision of the JOA that each of the Six Association and the Park Board shall agree on an operating budget; in these circumstances the Association was not in agreement with the budget with respect to the funding of the Group 1 employees and the Park Board did not seek the agreement of the Six Associations beyond the Memorandum of Agreement;
- b. it breaches the overarching principal that the Park Board and each of the Six Associations are to act jointly and in close cooperation with regard to the jointly-operated facilities, which includes the remuneration of employees working in the community centres and related facilities and agreements thereto; and
- c. it breaches the Park Board's duties arising as a result of the nature of its relationship with each of the Six Associations.

161. As a result of the Group 1 Breach of each of their Memorandum of Agreement and the underlying Group 1 Payment Agreement with the Park Board, each of Kerrisdale, Kensington, Hillcrest, and Sunset have suffered loss and damage including by not limited to the loss if use of the monies each of

them paid in Top-Up money after 31 December 2010. The Group 1 Breach is one of the many examples of the Park Board's unwillingness to act in accordance with its agreements, relying on the relatively weaker positions of the Six Associations to attempt to escape culpability.

II. Money Collected by Park Board

162. The Six Associations' JOAs state, "...all Association membership fees and other revenues generated by the use of the designated facilities shall be received by the Association." (underlining added). The Park Board has breached this term of the Six Associations' JOAs in that it collected monies that should have been directed to the Six Associations.

163. Registration for programs and classes offered by the Six Associations at their community centres and related facilities was previously carried out directly and solely through the Six Associations as was contemplated by their JOAs.

164. The City and Park Board implemented a central registration system through the City's website, where users can register for programs and classes offered at community centres across Vancouver, as well as in many cases also purchase memberships for the Six Associations.

165. This new method of registration constitutes a breach of each of the Six Associations' JOAs in that it directs revenue that belongs to the Six Associations to the City without any agreement or indication as to how the revenues will be reallocated back to the Six Associations. (the "Program Funds Breach")

166. In addition to being a clear breach of section 19 of the JOA, the Park Board has committed a further breach in that it failed to adequately consult with the Six Associations about the change in the program registration system, when the funds would be paid to the named Associations, and what the remedy would be if the Park Board failed to remit the funds in a timely manner.

167. As a result of the Program Funds Breach, the Six Associations have suffered loss and damage including but not limited to the loss of the use of their funds during the time that the Park Board failed to make the required payments in a timely way, the legal costs associated with having their legal counsel intervene to force payment of the funds, and interest on and associated with the loss of use of the funds – funds to which they are expressly entitled under the JOAs.

III. Hiring/Reassignment of Staff

168. It is both an explicit and implied term of each of the Six the Associations' JOAs that each of the Six Associations is to have an integral role in the hiring, management, and termination of the various staff at each of the Six Associations' respective community centres and related facilities.

169. The JOA explicitly states, *inter alia*, that staff's "duties and working hours shall be mutually agreed upon" by the Board and the Association", that the each of the Six Associations shall be

permitted to have representatives attend interviews of potential hires, that the Park Board “shall consider all reasonable comments” of the Six Associations (whichever applies under circumstances) in hiring staff, there shall be joint preparation of job descriptions, and any change in staff shall be discussed with Hastings, Hillcrest, Kensington, Kerrisdale, Killarney, or Sunset (whichever applies under circumstances), prior to such change being made.

170. Further to the above, there is the implied term that the Park Board and each of the Six Associations shall consult with each other on all staffing matters and shall come to mutual agreement. This is founded in part on the fact that each of the Six Associations employ and fund most of the employees and contractors at their community centers and related facilities – including many of those that are officially employed by the Park Board.

171. The Park Board has denied each of the Six Associations their respective rights under one or more of the above terms of the JOA (the “Staffing Breaches”).

172. As a result of these particular Staffing Breaches, the details of which are outlined below, each of the Six Associations have suffered loss and damage the particulars of which are known to the defendant and will be proven at trial.

173. Persons who are ultimately hired by the Park Board to work at the community centres and related facilities are under the direction of the Six Associations as per the JOA. It is essential that each of the Six Associations be party to the screening, interviewing, hiring, and firing process as provided by the JOA. It is equally as important for the Six Associations to be involved in the process of creating and renewing job descriptions as provided by the JOA. The Six Associations are well-equipped to provide input in all of these processes for the hiring of staff who will ultimately work at the Six Associations' respective facilities and under their direction, and, in many instances, on their payroll.

174. The Park Board has made changes to the staff at the Community Centres despite little or no consultation in breach of the JOA.

175. The Park Board has unilaterally eliminated many positions at Community Centres and stated that it is “twinning” positions with other community centres Champlain Community Centre, which results in a loss of service.

176. The Park Board has dictated that previously full-time positions have been reduced to part-time positions without consultation.

177. By making these staffing decisions unilaterally and failing to consult with the Six Associations the Park Board is in breach of the JOA.

IV. Reduction of Operating Hours

178. Each of the Six Associations' JOA states, "Designated facilities as per Appendix 'C' shall have, subject to budget constraints, full-time coverage with operating staff provided by and accountable to the [Park] Board." Each JOA further provides, "The operating hours of the jointly-operated facilities shall be mutually agreed upon by the [Park] Board and the Association".

179. As detailed below, the Park Board has committed breaches of the JOAs of Hastings and Kensington (the "Operating Hours Breaches").

180. As a result of the Operating Hours Breaches, each of Hastings and Kensington have suffered loss and damage including but not limited to the loss of revenue caused by the reduction in operation hours at their respective community centres and related facilities. Without this revenue, Hastings and Kensington has less money with which to pay staff, purchase equipment, and organize and host events and services for their communities.

V. Brochures

181. The Hillcrest JOA states, "[Hillcrest] should obtain and make available to the public, information about community athletic, social and cultural groups and should encourage the membership and participation of such groups in [Hillcrest] and its Board."

182. For many years, Hillcrest has produced brochures for distribution to its membership (the "Brochures") with such brochures including information about activities at the Hillcrest Community Centre and related facilities. Hillcrest has paid in full for these Brochures and has always included the content provided by the Park Board and Hillcrest.

183. Notwithstanding this long-standing practice of co-operation in producing the Brochures, the City has recently, unilaterally, decided that it will pay for the production of the Brochures and determine their content, which has involved limiting or excluding content provided by Hillcrest; particularly this has meant an exclusion of Hillcrest's "President's Message" which has traditionally been key part of the Brochures.

184. These actions of the Park Board were carried out in 2013 with regard to the Hillcrest Community Centre spring/summer and autumn 2013 Brochures.

185. This refusal of the Park Board to include Hillcrest's content in the Brochures is a breach of the Hillcrest JOA. (the "Brochure Breach")

186. The Brochures are one of the key ways in which Hillcrest communicates its goals and vision to its membership and the Hillcrest community. Two objectives of Hillcrest's content for the Brochures, and namely the President's Message, align with the Hillcrest JOA:

- a. the content aims to make available to the public information about community, athletic, social and cultural groups; and
- b. the content encourages the membership and participation of such groups in Hillcrest and the Hillcrest Board.

187. Without the ability to communicate with its members, Hillcrest is significantly impaired in its ability to raise awareness of important Hillcrest issues that require or would benefit from input from the members. Additionally, Hillcrest's members, being its key supporters, are important to Hillcrest in terms of fundraising and arranging for volunteers for Hillcrest efforts in support of the Hillcrest Community Centre and related facilities and services. The Park Board's Brochure Breach makes it difficult for Hillcrest to maintain the member and community support on which it relies.

188. The Park Board's Brochure Breach constitutes a breach of the JOA and as a result of this Hillcrest has suffered loss and damage the particulars of which are known to the Defendant and which will be proven at trial.

VI. Hillcrest Membership Fees

189. The Hillcrest JOA states that "all Association membership fees and other revenues generated by the use of the designated facilities shall be received by the Association and expended on...objects as are consistent with the Constitution of the Association".

190. The Park Board has failed to require that individuals registering for Hillcrest programs through the Park Board purchase Hillcrest memberships prior to registering in such programs, as is required by Hillcrest (the "Hillcrest Membership Breach"). This is in breach of the JOA and as a result Hillcrest has been deprived of the income from such memberships, as well as the members themselves.

VII. Failure to Consult

191. The Park Board has, with respect to all of the aforementioned breaches of the JOA, failed to reasonably consult with each Association, pursuant to the JOA by failing or refusing to:

- a. Inform the Six Associations of the Park Board's ideas and proposals that greatly affect the community centres at all or at an early enough stage of consideration that each of the Six Associations may still influence the implementation of the idea or proposal and its final form;
- b. engage in meaningful or any, dialogues with each of the Six Associations about the Park Board's ideas and proposals such that the Six Associations may express their opinions and ask questions and both parties have the opportunity to give and receive information and where the outcome of has not been predetermined by the Park Board; and

c. generally be open to the Six Associations' points of view and proposals.
(the "Consultation Breach")

192. In many instances the Park Board does not consult at all with each of the Six Associations or will present to the Six Associations a finalized plan that has been developed and is ready for implementation by the Park Board. This is not adequate consultation as it gives the Six Associations no ability to be heard in a meaningful way or to influence the outcome of a given Park Board proposal.

193. Furthermore, this impairs the successful operation of the joint ventures between the Park Board and the Six Associations and the operation of the community centres they run. The Six Associations and their members and volunteers, as represented by their volunteer boards of directors are the bodies which are aware of the community needs and resources. By refusing to use this insight and experience in making decisions about the community centres, the Park Board is threatening the ongoing success of the community centres and the programs and services they offer. Such decisions not only diminish the role and importance of the Six Associations, but they negatively impact the communities, who lose the valuable role of the Six Associations in the community centre's operation and the Six Associations' unique awareness of the needs and desires of their communities.

VIII. ONE CARD

194. In June of 2013 the Park Board announced and began to implement an access card and entirely new system of access to community centres and programs, discounts, and membership which will alter how funds are received and distributed and the necessity and value of membership, and will centralize control and revenue with the Park Board, thereby diminishing the role of the Six Associations.

195. This new card and the system it represents (the "OneCard"), represents a fundamental breach of the written and implied terms of the JOA and if allowed to continue will result in a significant loss of revenue and community support to the Six Associations.

Membership

196. Each of the Six Associations currently and historically has sold memberships to the members of each of their associations with such membership granting the membership holder certain rights and privileges, which include the right to vote on association matters, to use all or a majority of the community centres and related facilities and to register for the programs and classes put on by each of the Six Associations. In many of the Six Associations' cases this requirement is explicit in their society bylaws.

197. Each of the Six Association's membership fees forms a part of the revenue that each of the Six Associations receives and to which it is entitled under section 19 of each JOA.

198. Additionally, as discussed above with regard to each of the Six Associations, the memberships allow their holders to register in programs and classes put on by the Six Associations whose membership they hold. The fees paid for said programs and classes become revenue that each of the

Associations receives and to which it is entitled under section 19 of each JOA. The memberships are either purchased separately, in-person at the community centres themselves or are purchased online through the City's registration website where the memberships are purchased in addition to the registration for a program or where the cost of the a membership is built into the price of registration.

199. In the case of the use of the fitness centres, pools, and arenas, for most of the Six Associations a membership is also required to access those services, although for Kerrisdale (where a membership is not required for use of the arena or pool) and Killarney (where a membership is not required to use the pool or arena). Killarney does allow use of their fitness centres for non members on a drop-in basis, but with payment of a 50 cent surcharge.

200. The sale of memberships to the public accomplishes two objectives: it brings in revenue for each of the Six Associations and it encourages the public to become members of the Six Associations.

201. As has been discussed herein, the Six Associations each were founded on the vision and efforts of their members, who worked to raise money and lobby for the building of the community centres. In many cases they actually built the first community centres.

202. Today the role of members is equally important. The Six Associations rely on their members as potential volunteers – recruiting their members to volunteer to sit on the board of directors, to serve on committees which develop programs and initiatives, to staff special community events, and to help with programs and services generally, which helps reduce the cost of these programs and services for the community.

203. The Six Associations' members also provide essential insight into the community's needs and wants. The Six Associations rely on their members for providing feedback and completing surveys about the Six Associations activities, the community centres and related facilities and the programs and services offered. This is one of the ways in which the Six Associations can gauge what the communities want from their community centres and ensure they are working towards fulfilling that goal.

204. Members have also been an important source of donations - whether of cash or in-kind gifts – over the years, responding to the requests of the Six Associations when special projects or initiatives, such as construction or renovation projects, require additional funds. Additionally the existence of a large and active membership in the community has helped the Six Associations attract large, corporate donations.

205. Furthermore, the Six Association each apply for grants from municipal, provincial, and federal governments as well as from corporations, foundations, and community organizations, and for some of the grants, the amount of active members of each of the Six Associations is one of the criteria that the governments consider in determining which grants to give, in what amount or for what purpose.

206. Finally, the members of the Six Associations are invaluable for keeping the community centres part of the community, as membership provides the members with a stake and a voice in what

happens with and at the community centres. As members, they are entitled and required to be invited to annual general meetings and special general meetings of the Six Associations (whichever of them in which they hold, memberships). By attending and voting at these meetings the members can take an active role in shaping their community centres and the Six Associations can benefit from the input and engagement of the community in decision-making and identifying issues. Even between meetings, the Six Associations can keep their members informed and seek feedback on particular issues or generally. This ensures that the community remains the focus of the community centres and fosters a connection and sense of ownership between the community centres, the Six Associations, and their members.

207. The support and involvement from their members has been to a large extent what has contributed to the success of the community centers from the very beginning.

Discounts

208. Currently and historically, each of the Six Associations has had the option of creating discounts on the registration fees for programs and classes and the cost of accessing facilities such as fitness centres, pools, and arenas for particular members who are deemed to be in financial need, such as low income individuals and families, seniors, or youth and can do so within their annual budget.

209. Each of the Six Associations has the ability, based on their own individual budget and knowledge of their communities and their members, to set the discounts and define the criteria for eligibility in such a way that their most financially vulnerable members will not be denied access to the programs and community centres and related facilities, while simultaneously ensuring that each of the Six Associations does not grant so many discounts that it diminishes its revenue streams to a level which threatens the viability or ability to meet their financial obligations, such as paying staff or subsidizing particular services to ensure accessibility.

210. This autonomy with regard to setting discounts is important, as each of the Six Associations has different financial resources and amounts of revenue, which means they can offer discounts to varying degrees without prejudicing their activities or the community's overall interests. Additionally, each of the Six Associations exists in different neighborhoods, with varying degrees of affluence and poverty, which means that they each must determine the appropriate thresholds and amounts for offering discounts. The income at which one may be eligible for a discount on the westside of Vancouver is not the same on the City's eastside.

211. As with all aspects of the Six Associations and the communities they represent, a one-size-fits-all approach is not the solution to meeting their unique needs.

The Park Board Introduces the OneCard

212. In or about June 2013 the Park Board announced that it had ratified an interim agreement with the community centre associations across the City to implement a new system of access across all community centres and related facilities in the City, the OneCard.

213. None of the Six Associations have ratified an agreement or otherwise agreed to the implementation of the OneCard. There has been no meaningful consultation or discussion between the Six Associations and the Park Board with regard to OneCard. Initially, and in fact, the Six Associations were told that participation in the OneCard system would be voluntary and would not be forced on each of them. The Six Associations have asked the Park Board for evidence in support of the need for implementing the One Card System, including evidence that the current system was harming users, but the Park Board has at no time provided any such evidence.

214. The Park Board's OneCard system includes, but is not limited to, the following features:

- a. it allows individuals from outside of Vancouver to have OneCards;
- b. it eliminates the requirement for the holder of the OneCard to hold a membership in any community centre association for use of facilities or for registering in programs;
- c. it includes a 50% discount for eligible holders, with the eligibility requirements to be determined by the Park Board; and
- d. the fees paid for passes to access facilities such as fitness centres, arenas, and pools, which are loaded onto the OneCard are paid directly to the Park Board to be distributed at the Park Board's discretion, if at all.

215. No consultation was carried out by the Park Board with the Six Associations or any of them; rather, the Park Board simply sent letters on or about 6 June 2013 announcing that the OneCard system was being employed in complete contravention of their recent conversations with the Six Associations and media releases. At that time the Park Board suggested to the Six Associations that they could opt out of the OneCard program, but soon thereafter the Park Board made it clear that it was implementing the OneCard across all community centre associations and community centres, including the Six Associations and their facilities.

216. Each of the Six Associations has notified the Park Board that they do not support and do not accept the implementation of the OneCard as it has been presented. The Park Board was unwilling to delay implementation or to discuss an 'opt out' option for those Associations that do not support the initiative.

Breaches and Losses as a result of the OneCard

217. The OneCard breaches section 19 of the JOA, which provides:

"… all Association membership fees and other revenues generated by the use of the designated facilities shall be received by the Association and expended on program costs, equipment, supplies, community recreation services and other objects as are consistent with the Constitution of the Association."

218. The OneCard removes the membership requirement and denies the Six Associations those membership fees which they are to receive under the JOA, these membership fees form a part of revenue and are used by the Six Associations for activities such as subsidizing new programs and services for the community.

219. Furthermore, the Park Board proposes to pay only small amounts to each of the Six Associations to reimburse for lost revenues (and the formula for arriving at those amounts is unclear and unsubstantiated) generated by the use of the community centres and related facilities to each of the Six Associations. The Park Board receives full payment for the cost of a monthly or per-use pass to access facilities such as fitness centres and pools, and agrees to pay to a community centre association (including the Six Associations) a small percentage each time the OneCard is used at their facilities.

220. This is a clear breach of the JOA which states clearly that “...all Association membership fees and other revenues...shall be received by the Association...” (underlining added).

221. Section 19 of the JOA also stipulates that those membership and programs fees received by each Association are to be spent on “...program costs, equipment, supplies, community recreation services...” and other objectives in line with each Association’s constitution.

222. As the OneCard removes each of the Six Associations’ ability to grant discounts to patrons based on each of the Six Associations’ own criteria and discounts will be granted by the Park Board based on uniform criteria for all community centres, the Six Associations will have no ability to limit discounts according to their individual budgets, which will further decrease the amount of revenue each of the Six Associations receives.

223. An increase in discounts being provided through the Park Board and the OneCard will also deter many individuals from applying to teach programs and classes. These instructor positions are paid by the Six Associations and often on a basis equal to a percentage of the program registration funds. Currently the Six Associations can set these discounts and ensure that the program revenues will be equal to a certain amount, but with the Park Board granting 50% off discounts to certain individuals for use at any community centre and for any program, the Six Associations will find it more difficult to attract instructors, many of whom who are paid a percentage of the programs revenues received. Furthermore, it the Six Associations will find it more difficult to cover the cost of instructor fees when the programs are generating less revenue as a result of the Park Board discounts granted through the OneCard.

224. As well, the Six Associations will lose their ability to ensure that the discounts being provided are realistic given the economic realities of their communities.

225. The losses of revenue for the Six Associations in terms of the revenue from monthly or use-based passes to facilities such as fitness centre and will occur as the Park Board receives an increase in revenue from the sale of such passes.

226. This removal of the membership requirement by the Park Board frustrates each of the Six Associations’ fulfilment of their obligations under section 22 (section 23 in the Hastings JOA) to encourage the membership of the public and athletic, social, and cultural groups in their societies.

227. The requirement that individuals be members of the Six Associations is additionally upheld in the Park Board’s *Parks Control Bylaw*, which provides at section 17:

“Where any park or recreational facility shall be allotted to any club or organization, the same shall not be used by any person or persons unless he or she be a member of such club or organization...”

228. Additionally, by removing the requirement to purchase memberships, there will be no incentive to purchase memberships (and currently Park Board staff is actively discouraging their purchase) and the Six Associations will lose part of their ability to attract government grants and corporate donations and will lose their bases of volunteer recruitment, fundraising, and community feedback, support, and engagement.

229. The importance of membership in the Six Associations cannot be measured in monetary terms. The Six Associations rely on their members for community support in terms of donations and volunteers to carry out each of the Six Associations’ purpose under their respective bylaws and constitutions. The members are essential for voting on initiatives of the Six Associations and realizing those initiatives. This is the spirit of involvement and volunteerism that created the Six Associations and their community centers and the OneCard threatens to diminish it.

230. The Park Board is already actively dissuading individuals from becoming members of the Six Associations. Without members, the Six Associations will lose their support, a significant portion of their funding, and will be increasing phased out by the Park Board until they are gone or irrelevant. The result of this is that the communities will no longer have their local bodies in tune with their needs and demographics and will lose out on the programs and services that are tailored to their needs.

231. The Park Board’s OneCard constitutes a fundamental breach of the JOA by the Park Board of both the JOA’s written and implied terms. If this breach is allowed to continue each of the Six Associations will suffer irreparable harm in lost revenue, an end to the existing system of community centre access and membership in the Six Associations which has been in place successfully for decades providing finances, volunteers, and community support to the Six Associations and their initiatives, including but not limited to the community centres.

C. KENSINGTON COMMUNITY CENTRE AND CHILD CARE PROGRAMS

232. In approximately March 2011 the Park Board and Kensington agreed that the existing Kensington Community Centre needed to be replaced and that a new building should be constructed next door.

233. Kensington operates a licenced preschool and out-of-school/daycare program (the “Child Care Programs”) out of the Kensington Community Centre.

234. The Child Care Programs have been operated by Kensington for approximately 48 years pursuant to their agreement with the Park Board and the Child Care Programs contribute to Kensington’s revenue. There was an understanding and agreement that the Child Care Programs would be operated out of the new building.

235. From approximately April 2010 to September 2011, Kensington and the Park Board worked together toward creating a capital plan for funding the construction of the new building.

236. In or about September 2011 Kensington passed a motion to contribute approximately \$250,000.00 to the construction project and Kensington further agreed to actively seek additional funds for the new building.

237. Despite the good-faith beginning to this construction project, recently the Park Board unilaterally changed the building plans for the new community centre addition and did so without any consultation with or approval from Kensington.

238. Furthermore, the Park Board has refused to give Kensington any assurance as to what if any rooms in the new building would be for use by Kensington, for the Child Care Programs, office space, or for programmable space.

239. Additionally, although a significant impetus for the construction of the addition to the Kensington Community Centre was the need for more space for the Child Care Programs, the Park Board has advised Kensington that it intends to alter the Child Care Programs to add additional services and activities which are beyond the current license and abilities of Kensington and that it will no longer agree to allow Kensington to operate the Child Care Programs. Rather, the Park Board has advised Kensington that Kensington may bid on the right to operate the Child Care Programs but that it will receive no guarantee of being selected.

240. The Park Board's actions with regard to Kensington are not only in bad faith but if realized, will be in breach of the Kensington JOA, which provides at section 19:

"Neither the Association nor the [Park] Board shall make any additions or alterations to the facilities, nor enter into any agreement for the use of the facilities without first consulting each other."

241. Here the Park Board has already unilaterally changed the plans for the new addition to the Kensington Community Centre without consulting with Kensington and is now proposing to terminate an existing agreement between it and Kensington as to the Child Care Programs and to enter into a new agreement with a third party for the operation of the Child Care Programs, which occurs in the Kensington Community Centre.

242. If carried out, the Park Board's intended actions would be fundamental breaches of the Kensington JOA; accordingly, these are anticipatory breaches of the Kensington JOA.

243. If the construction goes ahead as currently planned, Kensington will have permanently lost its ability to be consulted on the design and construction of the new building, which as currently proposed may not be adequate to meet the needs of Kensington and the programs and classes it holds in

the Kensington Community Centre and which would be carried on to some extent in this additional building.

244. Furthermore, if the Park Board goes ahead with its intended plan of holding a bid on who will be permitted to operate the Child Care Programs, based on the additional services and activities which the Park Board has unilaterally decided to add, Kensington is unlikely to be selected by the Park Board to continue operating the Child Care Programs.

245. Kensington's loss of the right to operate the Child Care Programs would result in a significant and permanent loss of revenue for Kensington which would impact its overall ability carry out its duties under the Kensington JOA, including paying staff and purchasing equipment for the operation of programs and services at the Kensington Community Centre.

Part 2: RELIEF SOUGHT

1. A declaration that each of the Six Associations is operating its respective community centre and related facilities in a joint venture or, alternatively, a partnership with the Park Board;
2. An interim, interlocutory, and permanent injunction restraining the Park Board from breaching the terms of the JOA which restrict the Park Board from taking the following steps without the agreement of each of the Six Associations:
 - a. changing the terms of the relationship between the Park Board and each of the Six Associations;
 - b. entering into agreements for the use or management of the community centres and related facilities;
 - c. diverting membership revenue away from the Six Associations;
 - d. directing staff not to follow the reasonable directions of the Six Associations;
 - e. preventing the Six Associations from recruiting members and spreading information about membership or other activities; and
 - f. discouraging the public from purchasing memberships in the Six Associations or any of them.
3. An interim, interlocutory, and permanent injunction restraining the Park Board from implementing the OneCard system at each of the Six Association's community centres and related facilities;
4. An interim, interlocutory, and permanent injunction restraining the Park Board from beginning or continuing construction on the Kensington Community Centre or on any building related or adjacent thereto;
5. Further, and in the alternative, damages for breach of contract;
6. Further, and in the alternative, damages for breach of fiduciary duty;
7. Further, and in the alternative, damages for unjust enrichment, or a declaration that each of the Six Associations' community centres and related facilities and the revenues derived therefrom are held in constructive trust by the Park Board for each of the Six Associations;

8. An accounting of revenues, expenditures, and profits from the Defendant arising from the operation or each of the Six Association's community centres;
9. Interest pursuant to the *Court Order Interest Act*;
10. General, special, and punitive damages;
11. Costs; and
12. Such further and other relief as this Honourable Court may deem appropriate.

Part 3: LEGAL BASIS

1. The Six Associations, and each of them, say that the above conduct of the Park Board amounts to a breach of the terms of the relationship between these parties and that each of the Six Associations has suffered, continues to suffer, and/or will suffer damages and harm including irreparable harm. In particular, the Six Associations say that the conduct of the Park Board amounts to:

- a. Breach of the terms of the joint venture or, in the alternative, partnership agreement between these parties or each of them;
- b. Breach of fiduciary duty;
- c. Breach of contract or, in the alternative, anticipatory breach of contract; and/or
- d. Unjust enrichment.

A. Breach of Joint Venture or Partnership Agreement

2. Each of the Six Associations and the Park Board work together for the longstanding and historical purpose of jointly operating community centres, generating profits thereby, and providing social, athletic, and cultural services to each of the Six Association's communities. This activity fulfills the mandate of each of the Six Associations and also benefits the Park Board and the City by providing services to citizens of Vancouver in excess of what the Park Board and/or the City could provide if operating alone.

3. The Six Associations say that the relationship between each and the Park Board amounts to a joint venture or, in the alternative, a partnership, the terms of which, explicit or implicit, written or oral, include the following:

- a. The operation of each community centre will be governed by mutual consultation and agreement, and neither party will have the authority to substantially change the relationship absent the consent of the other;
- b. The roles and obligations of each party to each joint venture or partnership are set out in the respective JOA;
- c. that the Park Board and each of the Six Associations shall agree on an operating budget for the jointly operated facilities;
- d. that the Park Board and the Association are to act jointly and in close cooperation with regard to the jointly operated facilities;
- e. that each of the Six Associations' membership fees and other revenues generated by the use of the designated facilities shall be received by each of the Six Associations;

- f. that the duties and working hours of staff at the community centres and related facilities of each of the Six Associations shall be mutually agreed upon between each of the Six Associations and the Park Board;
- g. that each of the Six Associations shall be permitted to have three representatives at the interviews of potential recreational division and clerical support staff;
- h. that the Park Board and each of the Six Associations shall jointly prepare job descriptions for each staff member in the jointly operated facilities;
- i. that the operating staff shall comply with all reasonable directives of whichever of the Six Associations operates the community centre and related facilities at which that operating staff is employed;
- j. with regard to its duty to hire staff, the Park Board shall consider all reasonable comments of the whichever of the Six Associations operates the community centre and related facilities at which said staff is being hired;
- k. designated facilities shall have fulltime operating staff provided by and accountable to the Park Board;
- l. if the Park Board wants to make any change in the operating staff at the jointly operated facilities it shall first advise whichever of the Six Associations operates the jointly operated facilities of this intention;
- m. that the parties shall mutually agree upon the operating hours of the community centres and related facilities;
- n. that the programs of activities for each community centre and related facilities shall be the product of consultation between the community recreation coordinator and whichever of the Six Associations operates that particular community centre and related facilities;
- o. neither the Park Board nor any of the Six Associations may make any additions or alterations to the facilities, nor enter into any agreement for the use of the facilities, without first consulting with each other;
- p. membership fees and other revenue generated by the use of the designated facilities shall be received by each of the Six Associations and spent on objects consistent with their respective constitutions;
- q. any equipment purchased from the funds of each of the Six Associations for use in the jointly operated facilities shall belong to whichever of the Six Associations purchased said equipment; and
- r. each of the Six Associations should encourage the membership and participation of community athletic, social, and cultural groups in the Six Associations and their boards of directors.
- s. that the parties shall act in good faith with regard to all matters under and related to the JOA;
- t. that the Park Board, being a fiduciary to each of the Six Associations, shall fulfill its fiduciary duties;
- u. that the Park Board shall consult with each of the Six Associations on all matters over which the Park Board has a final decision under the JOA;
- v. that monies that are required to be paid to each of the Six Associations under the JOA are to be paid in a timely manner; and

w. that each of the Six Associations are to have an integral role in the hiring, management, and termination of the staff at each of their community centres and related facilities.

4. Further, the joint venture or partnership between the Park Board and each of Hillcrest, Kerrisdale, Kensington, and Sunset contained an additional, implied term that the Park Board would pay the Top-Up amount pursuant to the Group 1 Payment Agreement.

5. The Park Board has breached the terms of the joint venture or partnership between it and Hastings by the following conduct, as previously defined herein:

- a. the Program Funds Breach;
- b. the Staffing Breaches;
- c. the Operating Hours Breach;
- d. the Park Staff Breach; and
- e. the Consultation Breach.

6. The Park Board has breached the terms of the joint venture or partnership between it and Hillcrest by the following conduct, as previously defined herein:

- a. the Group 1 Breach;
- b. the Staffing Breaches
- c. the Program Funds Breach;
- d. the Blue Parrot Breach;
- e. the Vending Machine Breach;
- f. the Hillcrest Membership Breach;
- g. the Parking Spaces Breach;
- h. the Brochure Breach; and
- i. the Consultation Breach.

7. The Park Board has breached the terms of the joint venture or partnership between it and Kensington by the following conduct, as previously defined herein:

- a. The Group 1 Breach;
- b. the Program Funds Breach;
- c. the Staffing Breaches;
- d. the Park Staff Breach;
- e. the Operating Hours Breach; and
- f. the Consultation Breach.

8. The Park Board has breached the terms of the joint venture or partnership between it and Kerrisdale by the following conduct, as previously defined herein:

- a. the Group 1 Breach;
- b. the Program Funds Breach;
- c. the Staffing Breaches;
- d. the RPT Breach; and
- e. the Consultation Breach.

9. The Park Board has breached the terms of the joint venture or partnership between it and Killarney by the following conduct, as previously defined herein:

- a. the Program Funds Breach;
- b. the Staffing Breaches;
- c. the Field House Breach;
- d. the Park Staff Breach;
- e. the Minor Sports Breach; and
- f. the Consultation Breach.

10. The Park Board has breached the terms of the joint venture or partnership between it and Sunset by the following conduct, as previously defined herein:

- a. the Group 1 Breach;
- b. the Program Funds Breach;
- c. the Staffing Breaches; and
- d. the Consultation Breach.

11. The Park Board has also breached its joint venture or partnership with each of the Six Associations by unilaterally, and without consultation, implementing the One Card, which imposes fundamental changes on the operation of each community centre and which prejudices the ongoing viability of each of the Six Associations as an active participant in the operation of their respective community centres. In particular, and without limiting the generality of the foregoing, the conduct of the Park Board in failing to consult or seek agreement from each of the Six Associations before implementing the OneCard and in depriving thereby the Six Associations of members and membership revenue is conduct in breach of the Park Board's duties as a joint venturer or partner to each of the Six Associations.

12. The Park Board has also breached the terms of its joint venture or partnership agreement with each of the Six Associations by failing or refusing to engage in consultation with each of the Six Associations by failing or refusing to:

- a. hold meetings with each of the Six Associations or their volunteer boards of directors in which the Park Board's ideas and proposals are presented to each of the Six Associations at an early enough stage of consideration that each of the Six Associations may still influence the implementation of the idea or proposal and its final form;
- b. engage in meaningful, dialogues with each of the Six Associations or their boards of directors about the Park Board's ideas and proposals such that the Six Associations may express their opinions and ask questions and both parties have the opportunity to give and receive information and where the outcome has not been predetermined by the Park Board; and
- c. generally be open to the Six Associations' points of view and proposals and be willing to consider and discuss them.

13. As a result of the above, the Six Associations' damages for the breach of the joint venture, or alternatively the partnership agreement is half of everything that was created or acquired with the Park Board pursuant to that joint venture or partnership agreement since the time that they started to work together to build the respective community centres and related facilities to better the communities the parties serve.

14. As a result of the above conduct, each of the Six Associations has suffered, continues to suffer, and will suffer loss and damage.

15. Further, the Park Board threatens to continue the above conduct and cause further harm to the Six Associations unless enjoined.

B. Breach of Contract

16. Further, and in the alternative, each of the Six Associations says that the conduct of the Park Board above amounts to breach, and ongoing breach, of the implicit or explicit, oral or written, terms agreed between these parties for the operation of each community centre.

17. Each of the Six Associations has suffered, and continues to suffer, loss and damage as a result of these breaches.

18. Further, the Park Board threatens to continue the above conduct and cause further harm to the Six Associations unless enjoined.

C. Unjust Enrichment

19. In the further alternative, the Park Board had been unjustly enriched by the supply of funds from each of the Six Associations, including but not limited to the funds provided for the construction, renovation, and maintenance of the community centres and related facilities, the Six Associations' payment of the wages or salaries of both Park Board staff and staff employed by or hired by the Six Associations; the Six Associations' payment of the Top-Up; the Park Boards' holding and use of the funds received for memberships and programs at the community centres and related facilities, by receiving and refusing to remit to the Six Associations revenue derived from the use of the community centres and related facilities, and refusing to pay for staff.

20. This enrichment by the Park Board has been to the corresponding deprivation of each of the Six Associations without juristic reason. The funds of which the Six Associations have been deprived could, and should, have been used by the Six Associations to provide athletic, social, and cultural services to their respective communities rather than going to general revenue for the Park Board or the City.

21. Further, each of the Six Associations has contributed time, effort, and funds to the construction and maintenance of their respective community centres. This contribution has enabled the Park Board and the City to provide services to members of those communities and to the public at large.

22. The Park Board/City is the legal owner of each community centre and related facilities notwithstanding the Six Association's contribution of equity in the construction and maintenance of the same.

23. As a result of this contribution, direct and indirect, to the provision of services and the Park Board's unjust enrichment therefrom each of the Six Associations claims damages or declaration of constructive trust in each of the community centres and related facilities as defined above.

D. Anticipatory Breach of Contract –Kensington Joint Operating Agreement

24. In the further alternative, the Park Board's action of changing the building plans for the planned addition to the Kensington Community Centre without any consultation or agreement from Kensington amounts to an anticipatory breach of the Kensington JOA, which provides that neither party "shall make any additions or alterations to the facilities, nor enter into any agreement for the use of the facilities without first consulting each other."

25. These actions by the Park Board is also a breach of the Park Board's implied duties of good faith and consultation under the JOA

26. The Park Board has also committed an anticipatory breach of the Kensington JOA and the agreement between Kensington and the Park Board with regard to the provision of Child Care Programs by Kensington, which is a supplementary agreement that falls under the general powers of the JOA, by threatening to alter the Child Care Programs offered and to hold a bid for a body to provide said Child Care Programs, rather than allowing Kensington to provide the Child care Programs, as it has for years, pursuant to the agreement with the Park Board.

27. Additionally, the Park Board's plans with regard to the Child Care Programs is an anticipatory breach of the written terms of the JOA itself, which states that neither party "shall ... enter into any agreement for the use of the facilities without first consulting each other."

28. The Park Board here has not engaged in any consultation of Kensington with regard to the Child Care Programs, and its promise to hold a bidding process and add the additional services to the Child Care Programs are anticipatory breaches.

29. Kensington has not accepted the Park Board's anticipatory breach and seeks an injunction to restrain the Park Board from breaching its duties under the JOA with regard to the Kensington Community Centre construction project and the Child Care Programs.

E. Breach of Fiduciary Duty

246. In the further alternative, the Park Board has, in committing the above-described breaches, also breached its fiduciary duties owed to each of the Six Associations.

247. The fiduciary duty arises out of the nature of the relationship between the Park Board and each of the Six Associations in which each of the Six Associations contributes substantial effort and resources in furtherance of activities that ultimately benefit the Park Board.

248. By virtue of the Park Board, amongst other things, being in a joint venture or partnership agreement with each of the Six Associations, owning the land on which the community centres and related facilities are situated, receiving and controlling when and how membership fees and revenue in remitted to the Six Associations, maintaining control and custody of each of the Six Associations' membership lists and contact information, maintaining control of the Six Associations equipment, investing monies, and acting as the employer for staff for which the Six Associations pay, as well as having the power to resolve disputes under the JOA's Dispute Resolution Clause, it is clear that the Park Board is in a fiduciary position regarding each of the Six Associations.

249. Furthermore, it is important that the Park Board is a government body acting under agreements with not-for-profit, volunteer societies. The Six Associations are unique organisations that are vulnerable to any abuse or breach on the part of the Park Board.

30. As a result of the nature of the relationship between the Park Board and each of the Six Associations, the Park Board owes each of the Six Associations a fiduciary duty to, *inter alia*, act at all times in good faith and in the best interests of the each of the Six Associations.

31. The Park Board has breached its fiduciary duties owed to each of the Six Associations by the conduct outlined herein including, without detracting from the generality of the foregoing, failing to adequately consult with each of the Six Associations, and by failing to act in good faith in carrying out its duties under the respective JOAs.

32. As a result of the breaches of fiduciary duty by the Park Board, each of the Six Associations has suffered loss and damage.

F. Authorities

33. The Six Associations plead and rely the following:

- a. The Supreme Court Civil Rules.
- b. The Court Order Interest Act, R.S.B.C. 1996, c.79, as amended.
- c. Partnership Act, R.S.B.C. 1996, c 348, as amended.
- d. Vancouver Charter, S.B.C. 1953, c 55, as amended.
- e. Law and Equity Act RSBC 1996, c 253, as amended; and
- f. such further and other authorities as the plaintiffs may advise.

The Plaintiffs' address for service:

c/o Davison Law Group
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604-629-7810

Fax number address for service (if any):

Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street Vancouver, BC, V6Z 2E1

Date: 20 August 2013



Dean P. Davison

Signature of [X] lawyer for plaintiff



Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
- (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.